

FEDERAL-STATE COMMUNICATIONS JOINT BOARD

JULY 29, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 7048]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7048) to amend the Communications Act of 1934, as amended, to establish a Federal-State joint board to recommend uniform procedures for determining what part of the property and expenses of communication common carriers shall be considered as used in interstate or foreign communication toll service, and what part of such property and expenses shall be considered as used in intrastate and exchange service; and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this bill is to provide for a Federal-State joint board to (1) recommend uniform procedures to the Federal Communications Commission (FCC) for determining what part of the property and expenses of communications common carriers shall be considered as used in interstate or foreign communication service, and what part of such property and expenses shall be considered as used in intrastate and exchange services; and (2) recommend decisions to the FCC relating to common carrier communications of joint Federal-State concern.

BACKGROUND AND NEED

In the United States today there are over 120.5 million telephones. Of these, approximately 72 percent are classified as residential telephones and the remaining 28 percent are classified as business telephones.

These telephones comprise a nationally interconnected system which transmits approximately 169 billion calls a year.

Dominant in this national telephone network is the American Telephone and Telegraph Company and its 25 associated companies which comprise the Bell System. This System is concentrated primarily in metropolitan areas and has approximately 100 million telephones, a gross plant investment of over 56 billion dollars, and annual revenues of approximately 17.4 billion dollars.

The remainder of the telephone service in the Nation is provided by 1,843 independent, or non-Bell, companies which have 20.7 million telephones, a gross plant investment of almost 12.5 billion dollars and annual revenues of 2.9 billion dollars.

Regulatory jurisdiction over the telephone industry is divided between the FCC and the State commissions. The FCC regulates interstate message toll calls, commonly referred to as long distance calls. The State commissions regulate intrastate message toll calls and local exchange calls even in instances where the boundaries of the exchange area overlap State lines.

Under the rate base concept of ratemaking, practiced by the FCC and the State commissions, the Bell System, through its rates charged to the public, is entitled to earn a reasonable return on its plant invested in common carrier service and to recoup its expenses reasonably incurred in furnishing such service. Since the vast bulk of Bell System plant and expenses are used in furnishing both interstate and intrastate telephone service, such plant and expenses must be allocated or separated between the interstate and intrastate uses for purposes of ratemaking by the FCC and the several State commissions.

The procedures employed in the division of these joint telephone costs are commonly referred to as "separations procedures." Inherently, these procedures are highly technical and involve judgment factors in which there is no absolute correctness or incorrectness. However, it is essential to the public interest that procedures for separating such plant and expenses be fair and equitable so that no unreasonable burden will be placed on either interstate or intrastate telephone rates.

Over the years, the FCC and the State commissions have cooperated in separations procedures with varying degrees of success. Nevertheless, there is a definite need to establish a procedure whereby both Federal and State representatives can participate jointly considering separation issues as provided in H.R. 7048.

PROVISIONS OF THE BILL

H.R. 7048 would add a new Subsection (c) to Section 410 of the Communications Act of 1934 to require the FCC to refer to a Federal-State joint board for recommended decision any proceeding instituted pursuant to any FCC notice of proposed rulemaking regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations. Also, the FCC may refer to the board for recommended decision any other matter relating to common carrier communications of joint Federal-State concern.

The joint board would have seven members: three FCC commissioners selected by the Commission, and four State commissioners nominated by the National Association of Regulatory Utility Com-

missioners (NARUC) and approved by the FCC. The Chairman of the FCC or a member thereof would be chairman of any joint board.

When the FCC considers a recommended decision of a joint board, it must allow the State members of the board to sit with the Commission for oral arguments and deliberations. However, the State board members would not vote on the final decision.

As in Section 410(a) of the Act, Section 410(c) proposed by H.R. 7048 provides that the joint board's decision is the equivalent of an examiner's opinion in that it would "... prepare a recommended decision for prompt review and action by the Commission."

LEGISLATIVE HISTORY

H.R. 7048 is similar to H.R. 12150 of the Ninety-first Congress which proposed the creation of a seven member Board composed of four FCC Commissioners designated by the FCC and three State Commissioners nominated by the NARUC and appointed by the FCC. H.R. 12150 proposed that the Board would have *sole* administrative authority under the Communications Act of 1934 to prescribe uniform procedures for separating common carrier plant and expenses between interstate and intrastate operations.

The Subcommittee on Communications and Power held hearings on February 24 and 25, 1970, on H.R. 12150 with the NARUC testifying in support and the FCC testifying in opposition to the bill. The FCC contended that the H.R. 12150 joint board would impair its ultimate decision making authority in deciding separations issues.

However, the FCC, by letter of March 17, 1970, to the NARUC, suggested that pending jurisdictional separations proposals be considered by a Federal-State joint board. The Subcommittee thereupon suspended further consideration of the legislation to await the outcome of the joint board procedures. The FCC on May 20, 1970, adopted a notice of proposed rulemaking and order convening the joint board.

That joint board operated under procedures almost identical to those which would be made mandatory by H.R. 7048. Thus, the board consisted of three FCC commissioners and four State commissioners nominated by NARUC, with the Chairman of the FCC serving as the chairman of the joint board.

On August 6, 1970, the joint board convened, and a week later it recommended proposed rule changes to the FCC. Shortly thereafter, the Commission issued a further notice of proposed rulemaking, calling for comments from interested parties on the proposal—the so-called Ozark plan—of the joint board. On October 28, 1970, the Commission adopted a report and order which adopted the recommendations of the joint board on jurisdictional separations. The revised procedure resulted in an additional shift of approximately \$126 million in revenue requirements from intrastate to interstate operations.

During these proceedings, the FCC and the NARUC reached agreement on legislation which would write into law the procedures then being followed. This legislation was introduced by Mr. Rooney of Pennsylvania in the Ninety-Second Congress as H.R. 7048, the legislation herein reported by your committee.

HEARINGS

Your committee, acting through its Subcommittee on Communications and Power, held hearings on H.R. 7048 on June 28, 1971. At those hearings the Chairman of the FCC and the President of NARUC testified in favor of the bill. No one appeared in opposition to it.

COST

Members of State commissions who are appointed to a joint board established under the legislation would not receive any pay or fees, or be reimbursed for expenses, or receive any other recompense from the Federal Government. Consequently, enactment of this legislation should result in no cost to the Federal Government.

CONCLUSION

Your committee believes the legislation herein reported serves the public interest and should be passed by the House.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 410 OF THE COMMUNICATIONS ACT OF 1934

TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

USE OF JOINT BOARDS—COOPERATION WITH STATE COMMISSIONS

SEC. 410. (a) Except as provided in section 409, the Commission may refer any matter arising in the administration of this Act to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 11 of the Administrative Procedure Act, designated by the Commission, and shall be subject to the same duties and obligations. The action of a joint board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion

to reject any nominee. Joint board members shall receive such allowances for expenses as the Commission shall provide.

(b) The Commission may confer with any State commission having regulatory jurisdiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized under such rules and regulations as it shall prescribe to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this Act, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, powers, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions, as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act, and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.

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